THE LAW OF CORONERS.[1]

BY THEODORE H. TYNDALE, COUNSELOR AT LAW.

Mr. Chairman and Gentlemen, — The subject of coroners and coroners' law which we are about to discuss this evening has lately excited a good deal of attention both in England and in this country. The immediate cause of this attention in both countries has been the same. In both the proceedings in recent cases have been of a nature to lead many persons to doubt the propriety of the existing laws and of the procedure under them, and to inquire into the advisability of a change in the constitution and the conduct of the coroner's court.

It is my pleasing duty to place before you briefly the laws on the subject now in force in this Commonwealth, to notice the proceedings and practices that have grown up under them, and thus to open the way for your discussion of the remedies, if there be any, that may seem desirable.

The office of coroner is one of very remote origin. In England it could formerly be held only by "lawful and discreet knights." His functions were originally those of a conservator of the peace, and generally a ministerial deputy of the crown. He took the place of the *shire-reeve* (our present sheriff), or governor of the County, during his absence or incapacity. Part of his duty was the collection of the revenues; to "inquire of wrecks and of royal fishes, such as sturgeon, whales, and the like;" he took charge of forfeits to the crown of such moving articles — cattle, horses, or wagons — as directly contributed to the death of any person; and finally, he came to represent the crown in criminal cases where a dead body was found and violence or crime was suspected. With an exception hereafter to be noted, the latter duty is the only one with which, in this country, he is now charged, and which at present concerns us. The constitution of his court, the conduct of proceedings before it, and the manner of his appointment are the same now in England as they were in the time of Elizabeth. In this country the

[1] Read before the Department of Health of the American Social Science Association, and reprinted from the Boston Medical and Surgical Journal, March 1, 1877.

The writer desires to acknowledge his indebtedness in the preparation of this paper to the admirable address of Mr. Herschell, Q. C., M. P., delivered before the British Social Science Association, at Liverpool, in October, 1876.

only change has been in the manner of appointment. From time immemorial the coroner has been assisted in his investigation into the cause and manner of a violent death by a jury. Differing from time to time in the number composing it, it was always summoned from the immediate neighborhood of the place where the dead body was found, and still must be "of the county." Formerly the jurors were summoned as witnesses or accusers rather than as judges. Until the fifteenth century the jury themselves were the witnesses and the only witnesses, they being selected with reference to their knowledge of the facts, and no other witnesses being examined and no evidence whatever being offered to them. Though no longer selected for the purpose of obtaining from them the facts in the case, nor at all likely in towns or cities to have any previous knowledge of the facts, they are to this day sworn to return a true inquest according to their knowledge and such evidence as shall be laid before them. With this brief outline of the coroner's historical position, let us now pass to the actual position he occupies under our laws.

Coroners are appointed by the governor and council. They give bond in the sum of five hundred dollars, and are sworn. If on view of a dead body found the coroner deems it necessary to hold an inquest, he does so upon being authorized in writing by the attorney-general, district attorney, mayor, chief of police, or the selectmen of the town in which the body is found. In cases of railroad accident no such authority is necessary. The coroner issues a warrant to some constable, who summons six men of the county as a jury. If six do not appear, the number is completed from the by-standers. No person is allowed to serve on the jury oftener than once in twelve months. The inquest may be secret with the consent of a majority of the jury, and the witnesses kept separate. The testimony of the witnesses is required to be written down by the coroner or by some person at his direction, and signed by the witnesses. The verdict, the written evidence, and all recognizances and examinations taken by the coroner must be returned to the superior court within thirty days. If the jury find that a murder, manslaughter, or assault has been committed on the deceased, the coroner may bind over the witnesses or commit them, and if the person charged with the offense is not in custody the coroner may issue a warrant for his arrest.

Coroners hold their commissions for seven years. Their fees are, for a view, four dollars; for an inquest, five dollars for the first day and four dollars for each subsequent day. Witnesses get the fees allowed in a justice's court. The person writing the testimony gets one dollar and a half per day. The constable for summoning the jury and attending the inquest gets two dollars per day. A surgeon or chemist may be employed by the coroner to aid in the investigation. He receives

what the coroner certifies to be reasonable. The practice is to allow thirty dollars for an autopsy and fifty dollars for a chemical analysis. When no coroner lives in the place any justice of the peace may perform his duties. Property found on or near the dead person is taken charge of by the coroner, who must deliver it to those entitled to its possession.

The district attorney must be notified of an inquest when the coroner thinks a murder or manslaughter has been committed. He may attend and examine and bind over witnesses.

In every county two special coroners may be appointed, who alone can take the sheriff's place. When the sheriff is a party to proceedings, or the office is vacant, these coroners serve process and perform his duties until a new one is appointed. These special coroners give bond "to the satisfaction of the superior court." Coroners are removable by an address of both houses of the legislature to the governor. In case of breaking their bond to the injury of any person, if the execution is not paid in thirty days a proceeding for removal may be begun before the governor and council.

In practice a person desiring an appointment as coroner presents a petition more or less numerously signed, with one or more names of men of presumed respectability upon it; this is handed either to the councilor for the district in which the applicant resides, or to the governor in person. In the latter case the petition is referred to the councilor for the district for his investigation and report. Upon his favorable report the applicant is appointed. Sometimes a verbal application alone is made, and personal representations of friends are quite frequent; indeed, they are the rule.

The *appointment* of certain officers is supposed to be preferable to their *election*, by reason of the independence and the better class of material thus to be secured, since election is a matter of popular favor, of chance, and party ascendancy, and is no guarantee of proper qualification for office, while appointment permits selection for quality and fitness. Practically, it is impossible that the appointing power should be personally acquainted with individuals to be appointed when their number is large; thus the benefits arising from this system within certain limits are liable to fail beyond these. In such cases personal judgment of quality is necessarily supplanted by reliance on the representation of others, and thus the element of risk enters. No amount of care can then obviate all mistakes, and if mistakes occur it is not the fault of the appointing power, but of the law requiring the exercise of discretion beyond its natural bounds. The first thing that attracts attention in the law is that it fixes no limit to the number of coroners that may be appointed, and in practice this attention is justified by the facts.

The following figures will illustrate the outcome of this feature of

the law: London, with its enormous population, has *four* coroners; New York, with a population three times that of Boston, has *four*, with one medical deputy each; Brooklyn, with a population one third to one half greater, has *two;* Philadelphia, New Orleans, and Chicago, *two* each; San Francisco, Baltimore, Washington, and Cincinnati but *one* each, — a total of twenty-four for all these large cities taken together.

Suffolk County, consisting chiefly of Boston, has forty-seven coroners, of which the city of Boston alone has, or had a week ago to-day when I copied the record, forty-three, almost twice as many as all the above-named cities combined!

What results can you reasonably expect from such an unlimited, indiscriminate distribution of office? Will it not naturally tend to deteriorate the quality, and thus lower the tone of the whole body? We might fairly assume that in time no person fit for the office will accept one which is given away to any and every comer. Without here calling in question the personal probity or fitness of any person now holding the office, and without denying that it is still held by many worthy and competent gentlemen, it is not venturing too much, perhaps, to say in general terms that the standard of quality has been lowered. This is recognized and felt most severely by those *in* the office who are qualified and fit for it, but are conscious that the practices of others have brought the office to the verge of disrepute.

Of the forty-three coroners in Boston, thirty are regular physicians and members of the Massachusetts Medical Society, two are registered as members of the Massachusetts "Eclectic Medical Society," seven are what is known as "other physicians," while four are non-professional gentlemen. Of these last, one is an auctioneer, another an insurance agent and broker, a third vends patent medicines, while the fourth figures simply as "notary public and coroner."

Now, how important is it to have men of superior character to fill the office? What does its possession entrust them with?

You have in the coroner an officer armed practically with the utmost powers of the law. He decides in the first place, upon his discretion, whether an inquest be necessary or not; it is obvious how large are the opportunities for corruption in this direction: that for a man whose cupidity or possibly culpability and fear are stronger than his honor and integrity, it would not be difficult to thwart justice and close the door to all judicial investigation of a crime by corruptly declaring an inquest unnecessary, and even aiding in the removal of suspicion and the concealment of the evidences and traces by authorizing a speedy burial. But if he may thus on the one hand shield the guilty and endanger the public safety, on the other the opportunities for a man prompted by malice or vindictiveness or the desire of cheap notoriety are enough, truly, to make us tremble. With full judicial powers of examination and com-

mitment, with his chosen constable selecting his own jury, with supreme control of the investigation, which with the consent of part of his jury he may make secret, with the selection of his medical witness, and the power to summon and hear or omit and exclude whomsoever he will, uncontrolled by superior authority and responsible practically to no one for his action, he may bring ruin upon a life, or forever cloud and embitter it, throwing suspicion on the character of the living and blackening the memory of the dead; he may oppress and harass a stricken household without cause and without justification, — in one word, he may make an inquest in the worst sense of the term an *Inquisition*.

Will you entrust such powers to a man of any but the highest *character*, — whose integrity is above reproach and above suspicion? This you cannot be sure of by unlimited appointment; and such an office as I have described should surely not be given to one whose past life and character are such as to fail to inspire confidence in his disposition to resist dishonoring proposals or the belief that he is free from fouler motives.

I propose, therefore, in the first place, a reduction in the number of coroners.

As a matter of fact the inquests in Boston, notwithstanding the large number of coroners, are mostly held by some six of them. The constant practice of other cities proves that a smaller number will suffice for all wants.

By such reduction, besides preventing a great danger and present evil, you gain corresponding positive good: 1st. Each individual of a smaller number of appointees may be personally known by the appointing power, as *are* all the judges appointed in this State. 2d. You increase the dignity of the office and awaken that jealous public attention which always watches the appointee to a trust of dignity and importance and scans his qualifications. Whether there should be one chief with deputies, or several with coördinate powers, is an open question. It seems to me there is more likelihood of even excellence by making several co-equal appointments.

A few words as to the practice in regard to the jury. The constable being chosen by the coroner is not likely, as human nature goes, to exert himself unnecessarily, or to conflict with his views or desires in selecting the jurors whom it is his duty to summon. Except in cases where public attention has been pointedly aroused, the class of men chosen to act as jurors is proverbially inferior in moral standing and intelligence. The books teem with stories of their ludicrous and absurd verdicts. The hangers-on of the constable's office are generally in requisition. Previous to 1860, indeed, the business of professional juryman had grown to such extensive proportions that it was found necessary to enact a provision that no man should serve oftener than once in

twelve months. But even now a deficiency in the number of jurymen may be made up from "the by-standers."

The jury are to give a verdict. In practice I do not believe the jury do this once in ten times. The coroner suggests and even has written out beforehand, in appropriate language, the verdict that his judgment approves. This is submitted to the jury, and in most cases accepted by them without dissent. I once had the honor of officiating as foreman of such a jury. After the evidence had been heard, to the utter surprise of one of us, the coroner, who was standing at that moment in another part of the room, said: "This is all the evidence, gentlemen; the clerk has drawn up a verdict in accordance with the facts, which he will now read to you." And really that clerk had found our verdict before we had. But then he was an experienced clerk.

The usefulness of the jury, when judged by its work, is not apparent. Nurtured in tradition and deriving most of their store from its sources, lawyers are naturally attached to what is old; but for one I do not favor circuitous modes of action where direct ones answer the same end. Now here is an opportunity too good to be lost for straightening a very roundabout road.

The coroner notifies a constable, the constable summons a jury, the jury are sworn, the body is viewed, the testimony is heard, the verdict is returned, — and what do you do with it? Absolutely *nothing!* We get together a number of men, we inform them of certain facts and ask them to draw a conclusion from those facts, and for what purpose? Their verdict is not conclusive, it is not evidence, and is not even used at the subsequent trial; the statements there made by the witnesses are not evidence, the prisoner is not bound over upon it, nor until after a rehearing of the whole matter in the criminal court. Well, then, to what end is all this needless machinery and expense? To furnish an item for the evening press? Is there any service to the State? Is there any additional safety to the individual? I apprehend not; and we shall see farther on that there *is* a material and grave danger. The safeguard of the jury is interposed between the interests of the two, upon the trial; the accused has all the protection of that mighty bulwark of liberty there, and the coroner's jury does not add to it one particle. Whatever the verdict, the courts proceed without and independently of it in this country.

In England, the coroner, when a verdict accuses any one, still does bind him over to appear at the next assizes; but there is instituted a parallel proceeding by indictment in the regular courts, upon which alone he is tried. And if the courts, finding no cause to indict, discharge the prisoner, he is nevertheless bound to appear at the assizes to which the coroner's action referred him, and be there discharged. This extent of solemn and meaningless mockery does not obtain with us.

We simply do *nothing* with the coroner's verdict, without the pretense of doing *something*.

Here the coroner practically never binds over a suspected person, he being almost invariably in custody before the coroner knows anything about the matter. So that the coroner and his court, judicially considered, are a meaningless, but, as we have seen, by no means harmless anomaly. They serve no purpose, no results flow from their work, and they cause danger, evil, and expense.

Upon these grounds, therefore, I advocate the abolition of this useless body.

Having before determined the question of the character necessary for a coroner, let us turn our attention to his qualifications. One important fact must be kept steadily in view: THE SOLE PURPOSE OF THE CORONER'S INQUEST IS THE DETECTION OF CRIME. With a death unaccompanied by circumstances of suspicion the coroner has no concern. When such suspicion exists his functions are twofold. One is to determine with certainty whether the death has resulted from natural causes or from violence. By the term violence I here mean not only physical force, but poison and all means of death not in the ordinary course of nature. The other is to determine, if it be found to be a case of violence, how that violence was caused, and whether it constitutes a crime or not. One is a question of medical investigation, the other a question of legal determination. One is answered by a physical examination, the other by an inquiry into external facts, and the application of the laws to those facts. One is essentially the function of a physician, the other essentially the function of a lawyer.

I am not going to offend your ears by saying that the office is a judicial and not a medical one. It is composite, being neither judicial nor medical, because it is both, — a nondescript. Nor am I going to assert that it should be held by a lawyer. I only ask you to accompany me into an examination of the functions of the office as just indicated; these once clearly understood, the much-disputed question will decide itself. Let us only clearly understand the duties involved in its performance, and the respective relations of medicine and law to them, and all dispute is at an end.

What takes place when an inquest is held? In the first place the coroner decides whether it be necessary to hold one. This is clearly a matter of medical science, as the appearance and inspection of the body must chiefly determine it. Does he decide one necessary, the next thing is to convoke a jury to examine into the facts relating to the death. This is a matter of hearing testimony from witnesses; and the very statement of this function shows it to be clearly legal. One part of the facts to be heard by the jury is the condition and appearances of the body, and the scientific deduction from these; this again is evidently

only a medical field; one part of the jury's duty is to make up a verdict upon the facts ascertained by evidence, and the law applicable to those facts as laid down by the coroner; this again is a province clearly legal. Whether a given death result from natural causes or not, so far as the body indicates, the physician's examination is competent, and alone competent to decide; whether, the fact of violence being established by such examination, that violence constitutes a crime, and if so, what crime, the testimony of witnesses to external facts and the law applied to those facts alone can determine. In technical language, whether a homicide has been committed or not is a medical question; whether that homicide be justifiable homicide, or manslaughter, or murder, is a legal question.

Briefly, then, the physical examination is the physician's business; the passing upon the admissibility of evidence and the laying down of the law is the lawyer's. It would be as absurd and out of place for the latter to undertake to pass upon the very intricate questions of anatomy, physiology, pathology, and chemistry involved in the one, as it would be for the former to attempt to decide the equally delicate questions of law including considerations of the competency and validity of evidence, of the limits of self-defense, and of the nature and degree of crimes, which constitute the other. No lawyer is competent to answer the one, and no physician is qualified to answer the other; and a man understanding fully the nature and scope of his own profession ought to shrink from assuming the dangerous responsibility of practicing another. Now, is it possible for one man to unite in his person the knowledge and qualities requisite for both? Apart from human limitations I need point out only that science is armed with a microscope, while justice is blind; that the mind and temper of a physical investigator and witness are not the mind and temper of a judicial officer, who never comes in personal contact with the facts, but receiving them from others calmly balances them and passes judgment; that a witness is and must always be to some extent a partisan, and that it is as improper to permit the medical witness to take the other evidence, as to permit any other witness to act also as judge.

I am aware that when inquests are held and an autopsy is made, the coroner generally has some other physician to do it and be the medical witness; but in that case, the balance of the functions being wholly judicial, it is not apparent why their discharge should not be entrusted to the usual agencies employed in the discharge of judicial offices, nor why a medical gentleman should be chosen to do a lawyer's work. The judicial functions do not properly begin until crime is suspected; and when it is, the physician's office, save as a witness, ceases.

These considerations have brought me to the conclusion that the duties now performed by the coroner should be imposed upon, and the

powers he now exercises should be vested in two distinct persons, one a medical man, the other a lawyer.

I do not propose the subjection of the one to the other, but that each should perform the duties pertaining to his office, and proper to his profession. The rooted inconsistency of joining these opposite duties has constituted the most formidable obstacle to progress. I propose, therefore, now to dissever this incongruous union.

Two medical officers should suffice for Boston. In the country the persons now serving as coroners would in many instances be the proper persons to act as medical officers. The medical officer should go to the spot where a dead body is found, and should decide in the first place whether or not the death resulted from natural causes, from an inspection and if necessary autopsy of the body, before making which he should call a number of persons to note the position and appearance of the body, which he will disturb by the autopsy. He should make a written statement of his examination, — for the sake of greater accuracy and subsequent certainty, — and if he should find that death resulted from other than natural causes, he should at once notify the judicial officer, who should thereupon proceed with the further investigation. Policemen and detectives could then, as they do now, "work up" the case, that is, gather all information to be acquired; persons from the neighborhood would then as now interest themselves in assisting this search for facts, and thus there would be no want of witnesses. That useful executive officer, the policeman, who is almost always in charge before the coroner is notified and arrives, should be kept there to see that everything remains *in statu quo*.[1]

Of course you must make the judicial officer independent of the medical, so that in cases where the latter deems no judicial inquiry necessary, but such information reaches the former as to make him think otherwise, he may order the same or some other medical officer to make an autopsy, and may proceed with the investigation. The duties entrusted to these officers being of the greatest importance, we are undoubtedly all agreed that they must both be men of the highest character. I count upon your unanimous assent when I say further that the duties to be performed by the medical man require for their proper performance more than average skill and special training. The location and appearance of wounds, whether so situated as possibly to be self-inflicted; whether the condition and nature of wounds or abrasions indicate their infliction before or after death; the position of the body with reference to apertures in the building; the condition of the internal organs; the age and sex indicated by remains, — all these, and the

[1] The need of a public prosecutor — not to conduct proceedings already begun, but to put the machinery of the law in operation and see to the gathering of evidence — is becoming more and more clearly recognized; at present this duty devolves upon no one, the policemen and detectives performing it chiefly of their own motion.

almost infinite diversity of anatomical, physiological, and chemical details and questions that may arise in different cases require special experience and minute and accurate knowledge.

Most of the unfortunate blunders known as judicial murders have resulted from the inexperience or ignorance of the medical men engaged in the case either as witnesses or coroners undertaking to decide medical questions. Sometimes the consequences have been harmless, comparatively, and the stories are amusing; but too often they are tragical, and have a fatal termination. A few of these may serve to enforce this point.

Marc Antoine Calas was the son of John Calas, a merchant of Toulouse, aged seventy years, of great probity, and a Protestant. This son was twenty-eight years of age, of a robust habit, but of a melancholy turn of mind. He was a student of law, and becoming irritated at the difficulties he experienced (in consequence of not being a Catholic) concerning his license, he resolved to hang himself. This he executed by fastening the cord to a billet of wood placed on the folding-doors which led from his father's shop to his store-room. Two hours after he was found lifeless. The parents, unfortunately, removed the cord from the body, and never exhibited it to show in what manner his death was accomplished. The people carried the body to the town-house, where it was the next day examined by two medical men, who without viewing the cord or the place where death had been consummated declared that he had been strangled. On the strength of this the father was condemned and broken on the wheel. He expired with protestations of his innocence.

Reflection came when it was too late. It was recollected that the son had been of a melancholy turn of mind, that his clothes were not in the least ruffled, that a *single* mark only was found from the cord, which indicated suicide by suspension, and in addition to these facts that the dress proper for the dead was found lying on the counter. Voltaire espoused the cause of the injured family, and attracted the eyes of all Europe to this judicial murder. The council of state reversed the decree and vindicated the father's memory.

On board a ship coming from Calcutta there had been a disturbance, and one of the sailors was said to have received a blow in the side from a handspike. Four months after this, and when he had been in port several days and was often on shore, he one day ate a large dinner and drank freely. He was taken ill and a physician was sent for, but he died before any aid could be administered. An examination took place; the stomach was highly inflamed and still retained the food of the previous day. The liver was much diseased and there were numerous abscesses in it. The gall-bladder was natural. The fifth and sixth ribs were found to have been fractured so near the sternum as to occa-

sion a slight depression of that bone, but union was so complete as to give no indication of the age of the fractures. The heart and lungs were sound.

On these appearances the medical examiner gave it as his opinion that there was a probability that the *fracture of the ribs had produced the diseased appearance of the liver*, and that the influence of the latter had extended to the stomach. The persons accused of injuring the deceased were on this testimony committed by a justice of the peace to take their trial for murder. They were, however, soon brought up again on a writ of habeas corpus before two judges of the supreme court, and in the mean time the professor of anatomy in Harvard University had made a further examination of the disinterred body. The stomach was found to contain a quart of undigested food, mixed with gin. Its internal surface was highly inflamed, particularly at the cardiac orifice. There were four or five ounces of fluid in the pericardium. In the liver were several tubercles, one of which had suppurated, but it had no connection with the fractured ribs. Indeed, the "liver was so situated that it could not have been wounded by the fractured ribs without penetrating the diaphragm and the lower part of the lungs." Yet these parts were sound. The blood-vessels of the heart were highly congested, the ventricles contained much serum, and there was a general dropsical effusion throughout the body. No other opinion could be given than that it was a case of general disease, induced by intemperance, and that the immediate cause of death was the overloaded state of the stomach. The prisoners were in consequence discharged.

In 1800, at the Devon assizes, Thomas Bowerman was presented to the grand jury for the murder of a bastard child by pushing an awl into its head. The body had been disinterred by order of the coroner, and on the inquest a hole was found on the side of the head near the ear, agreeably to the testimony of a witness. An Exeter surgeon, hearing of this case, attended the grand jury. He examined the skull, and found that the supposed hole was the natural perforation of a vein, and in proof of this pointed out a covering of enamel round the opening, which could not have been there if it had been made by force. In further illustration he exhibited several skulls all having similar perforations, and each hole having a small channel, and the rim or edge smooth and polished.

Mr. Alcock, some years ago, stated in a public lecture at London that he had known a fracture of the base of the skull produced by the awkward and violent tearing of the upper portion during autopsy, the saw not penetrating deep enough to divide the bones, and this was mistaken by the inexperienced operator for fracture of the skull producing death. Being a criminal case, it might have led to melancholy consequences had not the error been detected by an observer.

Another case is related where one brother was supposed to have murdered another, and the crime was after many years thought to be brought to light by the accidental discovery of the bones. Dr. Perfect examined them before the coroner's jury and found that they were the bones of an aged female.

Amusing instances of gross ignorance happen sometimes. In a case of supposed abortion, before a coroner's jury in London, in 1829, a medical practitioner testified that the fullness of the breasts attendant on impregnation was the consequence of powerful medicines; that the natural opening of ducts about the os uteri were punctures, and finally, that the gall-bladder was filled with *florid* bile. For all of which the coroner's jury voted him their thanks.

Of course in many cases it is the public interest that suffers from such official incapacity. Dr. Guy relates that he was summoned by a coroner in a case where a woman previously in good health was seized with violent vomiting in the night and died the next morning. The suspicion of poison was strongly confirmed by the swollen and crimson appearance of the body. A bloody, frothy serum issued from the mouth. She had complained of a burning sensation at the stomach, and had expressed the opinion before death that she had been poisoned. Dr. Guy refused to give any opinion as to the cause of death without the opportunity of a post-mortem examination. The coroner, who was not a medical man in this case, being in great haste to hold another inquest in another part of the city, and seeing the bloody serum issuing from the mouth, remarked to the jury that it was entirely unnecessary to open the body, that there was no doubt whatever that the woman died from rupturing a blood-vessel, and advised them to return a verdict to that effect, although another physician who was present testified his belief that the woman died from the effects of poison. The verdict of the jury was in accordance with the coroner's recommendation. Being dissatisfied with such a flagrant dereliction of duty, Dr. Guy made known the facts of the case to the mayor, who caused the body to be disinterred, when it was satisfactorily proved that death had been caused by arsenic. Officers were dispatched in pursuit of the husband, but without success, as he had fled from the city, and thus in all probability a murderer escaped from justice.

So far we have considered the medical officer. As to the judicial officer, he should be a man at least of the standing and ability of the district and municipal court judges. And in the language of that admirable clause in our constitution, in order that these officers "may be as free, impartial, and independent as the lot of humanity will admit," they should hold their offices as long as they behave themselves well, and should have honorable salaries, ascertained and established by standing laws. This will rid us beyond peradventure of the unseemly rivalry

and race for fees which now occasionally occurs, and which cannot but tend to provoke scandal and bring into disrepute an important part of our judicial system.

I come now to an important portion of my subject. Upon what officer should this judicial function devolve? Should he be the person who subsequently has charge of the conduct of the prosecution, — I am speaking of cases where violence has been committed, for in none other is the judicial inquiry necessary, — or should he be a justice of some court?

You are aware, perhaps, that in France and in other countries of Europe the office of coroner is unknown. The prosecuting officer of the government — corresponding to our district attorney — proceeds to the place where a dead body is found, makes the investigation, summons witnesses, and takes their testimony in writing, which is read to and signed by them. He has power to prevent egress from the premises or departure from the neighborhood when necessary, to seize articles and papers supposed to be connected with the crime. He is authorized to take with him one or two persons deemed by their art or profession capable of appreciating the nature and circumstances of the crime.

In case a violent death is the subject of inquiry, or one where violence is suspected, he is assisted by one or two health officers, who are always physicians, who report on the causes of death and the condition of the body. He is the person charged with the subsequent prosecution of the crime as well.[1]

However efficient this may be found in a system like that of France, it is hardly in harmony with ours. We cannot afford to leave out of account in our legislation the weaknesses and foibles of human nature. I have before adverted to a fact familiar to all who have much acquaintance with the administration of criminal law, that the tendency of a prosecutor is to become a partisan. Every district attorney, every police officer, every detective, every person habitually engaged in the prosecution of crime comes in time to be less and less impressed with the truth of the proposition that every man must be presumed innocent until proved guilty. In him is represented the state, and the state is a party to the case; a judge must be the free and unbiased repository of the interests of both.

I reject, therefore, as unfeasible the proposition that the district attorney, having the later charge of the case, should also take the earlier evidence in a judicial capacity. If you say that his being allowed to act thus would give him better possession of the facts of the case for his subsequent use, I reply he may be present, but not in a judicial capacity. Let us beware how we make possible the union of prosecutor

[1] Teulet, Les Codes. 1860.

and judge, and create men more eager to convict than to do impartial justice.

Being judicial, the duty should devolve upon a judge. I now propose, therefore, to let the coroner's court be merged in the criminal courts of first instance, called in the country district courts, in the cities police or municipal courts, and to transfer the judicial duties hitherto performed by the coroner to the judges of these courts. Being the first step in a judicial proceeding, all subsequent steps of which are taken in the courts, nothing can be more appropriate or logical than this transfer. Thus, and thus only, can you secure its proper place in a responsible and orderly judicial system.

Nor is the proposed change as great as at first sight it appears. These courts perform now the identical duties performed by the coroner so far as he acts judicially, only they do it over again after the coroner instead of doing it once and for all. The judges of these same courts now do decide on their discretion whether a person accused shall be bound over for trial or discharged. So you are placing no more power in their hands than they now have. You risk nothing by the change and you get rid of a great danger.

Let me call your attention to another view of the subject With anxious care and infinite solicitude we guard the life entrusted to our hands in a criminal trial. We employ the most august and elevated tribunal to preside over it, the highest law officer of the State to conduct it; we allow the accused free choice of learned and able counsel to see to it that all the safeguards of the law surround and protect him. All this we do as well to do justice to the State as to abstain from doing injustice to the individual. Yet we entrust the first step in this proceeding to random and irresponsible hands. And yet the first step is not infrequently the most important of all. "Incompetent hands may destroy, untrained minds may overlook, the information which is readily obtainable at first, but once neglected is irreparably lost." Consider the possibilities of imminent peril to endangered innocence, of hopeless loss to the security of the public here involved.

In the country, where the district courts discharge the duties of courts of first instance, this change would involve no increase of judges or of expenditure. Their business does not occupy more than a few hours a day at the most. In Boston the municipal court performs these duties. There are three judges, and a special justice who sits in the absence of either of the others, in the city court. The suburbs have each a municipal court, with one justice and two special justices. If we have not enough judges, one more at the most will suffice for Boston proper. For the district courts no increase or change will be required.

There were held in Boston during the year ending April 30, 1876, one hundred and ten inquests and four hundred and twenty-three views,

costing the city the sum of $10,769.74. By comparison with previous years it will be seen that the amount is steadily increasing. This expenditure included for medical examinations $1790, for chemists $170. This with the $4000 or more paid to jurors, constables, and scribes would give you enough to pay good salaries to two competent medical officers, and when you consider that no new judge is needed you have another $3500 at your disposal. The number of views and inquests just mentioned is so largely in excess of the published facts as to give ground for the supposition that practices may now prevail which under a competent and responsible medical officer would not occur, and thus the number would perhaps be materially reduced.

Now the coroner and jury must view the body, and the oath must be administered to the jury *super visum corporis*, and this, moreover, to quote an old English author, in order that the jury may have the benefit of the coroner's remarks upon the appearances which the body exhibits.

As the proposed plan does away with the jury and gives the physical examination entirely into the hands of the medical officer, no good reason is apparent why the judicial hearing should be held on the spot, though there is probably no valid objection to that course.

I have repeatedly referred to the want of responsibility of the existing coroner. We, as attorneys, are responsible to the courts; ministers are amenable to the discipline of their conferences; there is no public servant who is not subject to some higher power for correction and removal. The coroner gives a bond for five hundred dollars, — less than a constable; there is no penalty enacted for his misconduct in office, and the only way to remove him is by an address of both houses of the legislature to the governor!

The power of the coroner to serve process and exercise other functions of the sheriff under certain circumstances is a relic of the remote past, when he was the sheriff's substitute and deputy, and has now no ground or justification for being continued. These powers should at once be transferred to the sheriff's deputies or to the sheriffs of adjoining counties.

To recapitulate briefly. The changes proposed are: —

(1.) To abolish the office of coroner as now constituted. The abolition of the coroner's jury will follow.

(2.) To divide its duties between (*a*) medical officers, to make the examination and testify to its results, (*b*) judicial officers, to receive the testimony and apply the law.

(3.) To have the medical officers appointed by the governor and council, during good behavior, and removable by the same power for cause shown. In Suffolk County there should be two, and they should receive fixed salaries. In the other counties they should be more nu-

merous (owing to the greater distances to be traveled), and should be paid by fees for the services rendered.

(4.) To have the judicial duties performed by the justices of the criminal courts of first instance, as a part of a regular judicial procedure.